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MANPOWER
RESERVE AFFAIRS
AND LOGISTICS

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Civilian Personnel Manual
CPM Basic Installment No. 4

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DEPARTMENT OF DEFENSE
CIVILIAN PERSONNEL MANUAL (CPM)
CPM BASIC INSTALLMENT NO. 4

CPM Chapter 711, Labor-Management Relations, is issued herewith.

1. Add new pages as indicated below immediately following FPM Chapter 710.

CPM Identification	Insert Pages	Explanation of Changes
711	711-1 through 711-37, including Appendices A through F	Adds DoD policies and guidance concerning labor-management relations.

2. File this Installment Sheet immediately preceding CPM Chapter 272.

Attachment

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Subchapter 1. Purpose and Applicability

1-1. PURPOSE. This CPM Chapter sets forth policies and procedures applicable to labor-management relations within the Department of Defense in order to promote effective and equitable implementation of the policies, rights and responsibilities established by the Federal Service Labor-Management Relations Statute (CPM 711.E-1) and DoD Directive 1426.1 (CPM 711.E-2).

1-2. APPLICABILITY AND SCOPE

a. Except as provided in subsection b., below, the provisions of this Chapter and the Federal Service Labor-Management Relations Statute (CPM 711.E-1) apply to the Office of the Secretary of Defense, the Military Departments, the Organization of the Joint Chiefs of Staff, and the Defense Agencies, including nonappropriated fund instrumentalities under their jurisdiction.

b. This Chapter and the Statute shall not apply:

(1) To the National Security Agency, as provided in 5 U.S.C. 7103(a)(3);

(2) To organizational or functional entities within the Department of Defense which the President has excluded from coverage pursuant to 5 U.S.C. 7103(b) and which are listed in Executive Order 12171 (CPM 711.E-3); or

(3) Except for those in the Panama Canal area, to non-U.S. citizen personnel employed at installations or activities of the Department of Defense which are outside the United States. Relationships with labor organizations representing such non-U.S. citizen employees will be consistent with pertinent intergovernmental agreements, local practices and customs and DoD Instruction 1400.10 (CPM 711.E-4).

1-3. DEFINITIONS. See Appendix D.

1-4. REFERENCES. See Appendix E.

1-5. EFFECTIVE DATE AND IMPLEMENTATION. This CPM Chapter is effective immediately. Forward two copies of implementing documents to the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics) within 120 days. Insofar as appropriate, primary national subdivisions shall consult with representatives of recognized labor organizations in formulating such documents.

Subchapter 2. General Policies

2-1. BASIC PRINCIPLES. Labor-management relations in the Department of Defense shall be governed by the following policies and principles:

a. Effective labor-management relations are a basic part of the responsibility of DoD managers, military and civilian, at all levels, wherever there are employees subject to the Federal Service Labor-Management Relations Statute (CPM 711.E-1).

b. Authority on matters of personnel policy and practice and working conditions will be delegated to the maximum feasible extent consistent with the need for uniformity (where such a need exists), efficiency, and for effective direction and control. Delegation to local managers will help to ensure meaningful employee participation, as well as to avoid escalation of problems which should be resolved at lower levels.

c. Managers shall refrain from interfering with the free choice of employees in representation matters. When employees have chosen exclusive representation through established procedures, managers should take steps to establish positive and constructive relationships with the union selected.

d. Emphasis in dealing with recognized unions will be not only on the resolution of issues and problems which arise at the bargaining table and at the worksite, but also on the establishment of relationships and understandings that can help to preclude such problems. When disputes cannot be resolved without third-party assistance, and resort to such assistance is timely and appropriate, the machinery established by the Statute will be utilized as expeditiously as possible in order to remove such disputes as sources of friction, employee dissatisfaction, and reduced productivity.

e. Unions which have been accorded recognition as the exclusive representative of DoD employees have a legitimate interest in matters affecting the terms and conditions of employment of personnel in the bargaining unit. Attention should be devoted to ensuring that information concerning such matters is provided to union representatives as a matter of good labor-management practice.

f. The achievement of modern and efficient work practices and a commitment to high standards of performance are essential. Managers must retain the ability and authority to determine work methods, assign work, and make other decisions that are basic to the efficient management of the public enterprise and the accomplishment of the national security mission of the Department of Defense.

g. Labor-management relations activities will be given a high priority in the allocation of resources and manpower in order to assure adequate professional staff resources and training of managers in this area.

2-2. SUBJECTS APPROPRIATE FOR NEGOTIATION. Subjects appropriate for negotiation with labor organizations holding exclusive recognition include conditions of employment of unit employees as defined in 5 U.S.C. 7103(a)(14), which fall within the scope of authority of the responsible official at the level at which recognition was accorded. Also subject to negotiation, insofar as their application to the unit at the level of bargaining is concerned, are matters of personnel policy and practice set forth in (a) regulations issued below the primary national subdivision level, and (b) a regulation issued at the DoD or primary national subdivision level (1) for which a specific exception has been granted by the issuing authority or (2) with respect to which the Federal Labor Relations Authority has determined that no compelling need exists.

2-3. MANAGEMENT RIGHTS. In dealings with labor organizations, DoD management representatives shall ensure that the management rights set forth in 5 U.S.C. 7106(a) are retained.

2-4. PROPOSALS FOR CHANGES IN REGULATIONS. Nothing in this Chapter shall be considered to imply that the existence of established DoD-wide or primary national subdivision personnel policies or regulations on any matter precludes recognized labor organizations from presenting suggested changes or modifications in those policies or regulations to the officials responsible for them.

2-5. CONFLICTS OF INTEREST. In order to avoid actual or apparent conflicts of interest between the activities of DoD personnel and their official responsibilities, it is the policy of the Department of Defense that:

a. Although the following individuals may join any labor organization, they may not act as a representative of, participate in the management of, or be represented by any such organization which is subject to the Federal Service Labor-Management Relations Statute (CPM 711.E-1):

(1) Management officials and supervisors (except that this subsection does not apply to supervisors in maritime occupations serving as officers or representatives of labor organizations which traditionally represent such supervisors in private industry and which held exclusive recognition for one or more units of such supervisors in any Federal agency on October 29, 1969, or supervisors in units to which section 1271(a) of the Panama Canal Act of 1979 (CPM 711.E-5) applies).

(2) Employees engaged in personnel work in other than a purely clerical capacity; and

(3) Confidential employees.

b. No employee shall carry on any activities, as an officer or agent or a labor organization, which conflict or give the appearance of conflicting with the proper exercise of, or are incompatible with, his or her official duties or responsibilities. In the event such a conflict or incompatibility arises, the individual concerned will be given a reasonable opportunity to correct the condition causing it. Should an apparent conflict or incompatibility arise with reference to an employee in an exclusive unit, consideration

shall be given to the filing of a unit clarification petition under the procedures set forth in the regulations of the Federal Labor Relations Authority (CPM 711.E-6), 5 CFR 2422, to obtain a determination as to whether the employee is properly included in the unit.

2-6. RESPONSIBILITIES

a. Responsibility for the development of Department of Defense policy regarding labor-management relations and for coordination of labor-management relations programs and activities throughout the Department rests with the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics), as set forth in DoD Directive 1426.1 (CPM 711.E-2). The designee of the ASD (MRA&L) for the carrying out of these functions, except for the most critical policy determinations, is the Deputy Assistant Secretary of Defense (Civilian Personnel Policy). The DASD(CPP) is accordingly the Department's primary point of contact with the Federal Labor Relations Authority. Primary national subdivisions will submit any letter, petition, or other document to Authority headquarters involving a policy issue, a negotiability dispute, or exceptions to an arbitration award only after consultation with and authorization, on a case basis, from the DASD(CPP). The DASD(CPP) will coordinate as appropriate with the Office of the General Counsel, Department of Defense.

b. The Head of each primary national subdivision having jurisdiction over employees paid from both appropriated and nonappropriated funds shall designate a single official to act on his or her behalf in formulating labor-management relations policies applicable to both types of employees and to decide or recommend action on disputes involving both types of employees which may arise out of the labor-management relations program.

2-7. TRAINING. The commanding officer of a DoD activity at which there are one or more bargaining units consisting of civilian employees subject to this Chapter and the Federal Service Labor-Management Relations Statute should arrange to attend a course in labor-management relations of at least 2 days' duration prior to or within 6 months of the date he or she reports to the activity, or within 6 months of the date an exclusive representative is certified for the first time at the activity, unless he or she has attended equivalent training within the previous 3 years. An individual designated as Chairperson of the management negotiating team at a DoD activity shall, unless he or she is experienced in labor negotiations, undergo appropriate negotiation training conducted either by a primary national subdivision or the Office of Personnel Management prior to the commencement of negotiations.

2-8. LOCAL AREA COORDINATION. DoD activities with employees subject to the Statute are strongly encouraged to participate with other Federal offices and activities in the same geographic area on committees or study groups formed for the purpose of exchanging information concerning developments in local negotiations and other aspects of labor-management relationships of concern to management. Where no such interactivity group exists, the largest DoD activity in the area is encouraged to take the initiative in forming one.

2-9. EMERGENCY SITUATIONS. Nothing in this Chapter or any agreements entered into under its provisions shall restrict the Department of Defense or its officials in situations of emergency from taking any actions necessary to carry out its mission.

Subchapter 3. Recognition of and Dealings with Labor Organizations

3-1. GRANTING NATIONAL CONSULTATION RIGHTS

a. Upon written request by the head of a national or international labor organization, national consultation rights shall be extended by the head of a primary national subdivision within DoD when it is determined that the organization meets the criteria set forth in the regulations of the Federal Labor Relations Authority (CPM 711.E-6), 5 CFR 2426, with respect to that primary national subdivision.

b. National consultation rights shall be extended by the ASD(MRA&L) when it is determined that a requesting labor organization meets the established criteria with respect to the DoD as a whole.

c. Once each year the head of each primary national subdivision and the ASD(MRA&L) will review grants of national consultation rights then in effect to determine whether the labor organizations involved continue to meet the criteria for such rights. Figures used for this purpose will be those reported to the Office of Personnel Management in November of each year and reflected subsequently in OPM's annual publication "Union Recognition in the Federal Government." Where it is determined that a labor organization no longer represents enough employees under exclusive recognition to qualify for national consultation rights, the organization will be provided 30 days' advance written notice of intent to terminate its national consultation rights.

3-2. DEALINGS WITH ORGANIZATIONS HOLDING NATIONAL CONSULTATION RIGHTS

a. A labor organization granted national consultation rights shall be notified by the primary national subdivision of proposed substantive changes in personnel policies issued by the primary national subdivision which affect employees represented by the organization, and shall be given the opportunity to comment on such proposed policies. The primary national subdivision will respond in writing to labor organizations submitting comments, advising them of the reasons for the actions taken.

b. An organization holding national consultation rights may raise personnel policy matters, including requested changes in personnel policies, procedures and practices of interest to the employees they represent, either in writing or through conferring in person with appropriate officials of the primary national subdivision concerned. The views and suggestions of organizations holding national consultation rights will be considered carefully in the formulation or revision of personnel policies.

c. Primary national subdivisions are not required to consult with a labor organization holding national consultation rights with respect to any management decision or action which, if the organization were entitled to exclusive recognition at the national level, would not be included within the obligation to negotiate as set forth in the Federal Service Labor-Management

Relations Statute (CPM 711.E-1). However, labor organizations must be informed of such proposed decisions or actions and are entitled to consult, on request, with regard to their impact on employees represented by the organization.

3-3. PROCEDURES RELATING TO PETITIONS FOR EXCLUSIVE RECOGNITION

a. Each primary national subdivision shall establish procedures to ensure that upon receipt of a copy of a petition filed by a labor organization for exclusive recognition in a DoD activity or command, or a request for consolidation of existing units, the activity or command involved will promptly forward a copy of the petition or request to the head of the primary national subdivision or designee.

b. The criteria set forth in CPM 711.A will be applied by primary national subdivisions, commands and activities in determining their position as to the appropriateness of units under consideration. No particular type of unit may be prescribed in advance by management officials. (Information concerning procedures for the handling of disputes on unit, representation and election issues is set forth in CPM 711.4-1.)

c. Where agreement is reached on a unit, the activity or command, as appropriate, shall cooperate with the Federal Labor Relations Authority, and with the labor organization(s) involved, in working out arrangements and details of an election (unless the unit results from the agreed-upon consolidation of existing units) to be supervised or conducted by the Authority.

d. Heads of DoD commands and activities are responsible for complying with applicable regulations of the Authority with respect to the posting of notices, observance of time limits, and similar requirements.

e. As provided in 5 U.S.C. 7116(e), management may publicize the fact of a scheduled representation election and encourage employees to exercise their right to vote, so long as any statements made are noncoercive in nature and context.

3-4. DEALINGS WITH ORGANIZATIONS HOLDING EXCLUSIVE RECOGNITION

a. Rights and Obligations

(1) A labor organization granted exclusive recognition in an appropriate unit shall have the rights and responsibilities conferred upon such organizations by the Federal Service Labor-Management Relations Statute (CPM 711.E-1), subject to explication through decisions of the Federal Labor Relations Authority and of the courts.

(2) Under the Statute, management and labor organizations holding exclusive recognition have a mutual obligation through appropriate representatives to meet at reasonable times and bargain in good faith on negotiable matters. Such obligation does not, however, compel either party to agree to any specific proposal advanced, or require the making of a concession on any specific matter.

b. Negotiation of Agreements

(1) Heads of DoD commands and activities will arrange for authority on negotiable matters to be exercised by those persons designated as the principal management representative in negotiations with labor organizations holding exclusive recognition.

(2) Negotiation of agreements will take place at such times and places as are mutually agreeable to the parties.

(3) Terms and provisions of agreements will apply within the unit for which negotiated and will not be contrary to any published policy or regulation of the DoD or the cognizant primary national subdivision in effect as of the effective date of the agreement, except a published policy or regulation (a) for which a waiver or exception has been approved at the request of one or both of the parties to permit negotiation on a particular subject, or (b) with respect to which the Federal Labor Relations Authority has determined that no compelling need exists. (Information concerning procedures for the handling of negotiability issues is set forth in CPM 711.4-2.)

(4) Substantive Government-wide regulations as well as regulations which are issued within DoD, and which do not merely transmit requirements imposed by law, do not override any provisions of a negotiated agreement during the term of that agreement. However, each agreement must be brought into conformance with applicable published policies and regulations of the primary national subdivision and of the DoD and with regulations of appropriate non-DoD authorities, at the time it is renegotiated, or when it is renewed or extended and such renewal or extension will result in its being in effect for more than 3 years and 90 days since it was last brought into conformance with applicable laws and regulations.

(5) An agreement negotiated with a labor organization accorded exclusive recognition will contain a procedure, applicable only to the unit, for the consideration of grievances. As provided in 5 U.S.C. 7121, such a procedure (a) may exclude from its coverage such matters as the parties mutually decide, and (b) for grievances not satisfactorily settled, must terminate in binding arbitration.

(6) No agreement will exceed 3 years in duration from its effective date. An agreement may be renewed or extended for a specific period (not to exceed 3 years for each renewal or extension) where the parties so agree, subject to the requirement set forth in subparagraph (4) above.

(7) It is recognized that deadlocks in negotiations may develop on some issues despite good faith bargaining by both parties. Every effort must be made to avoid or resolve apparent deadlocks and to achieve agreement without unduly protracted negotiations. Such efforts should include painstaking reappraisal of positions by those participating in the negotiations. The use of joint fact-finding committees, the seeking of guidance from higher echelons within the primary national subdivision or the labor organization

involved, or both, and/or the use of a third party for consultation or advice may be helpful. Where a negotiation deadlock cannot be resolved by the parties, its resolution shall be pursued in accordance with CPM 711.4-3.

(8) The effective date of an agreement, supplement, or amendment will be (a) the date of its approval by the head of the primary national subdivision or by an official who has been delegated such approval authority, or (b) any other date upon which the parties may have agreed which is subsequent to the date of approval, provided such effective date is clearly described in the agreement, supplement, or amendment, or (c) the 31st day following the date of execution of the agreement if approval/disapproval action has not been taken before then. Approval action should not be taken until the review discussed in subparagraph (10) below has been completed; approval of an agreement which is subsequently found to contain provisions that conflict with published policies or regulations of the primary national subdivision or of the DoD constitutes, in effect, waiver of the conflicting regulatory requirements.

(9) Heads of primary national subdivisions may delegate authority for the approval of agreements to heads of subordinate offices, commands, or activities. Agreements (and supplements and amendments thereto) shall be approved if they conform to applicable laws, regulations of appropriate non-DoD authorities, and published policies and regulations of the DoD and the cognizant primary national subdivision (see CPM 711.3-4.b.(3), above).

(10) Heads of primary national subdivisions shall ensure that all negotiated agreements, and any supplements and amendments thereto, upon execution (including insertion of the date of execution) by the negotiating parties, are immediately forwarded for review by a professionally competent staff organization at a higher level. This review should be completed and both parties notified of the results as soon as possible. Should one or more provisions be determined to conflict with applicable laws, published policies, or regulations, the parties shall be provided with information clearly identifying each conflict so that they may take appropriate action. Any notice of disapproval of portions of an agreement based on conflict with law, published policy or regulation must be served in written form on the union's designated representative - i.e., mailed by certified mail or delivered in person - within 30 days from the date of execution of the agreement.

c. Changes Initiated by Management

(1) Except with respect to matters covered in an existing agreement, when management at the level of exclusive recognition contemplates taking action which will impact on conditions of employment of unit personnel, the exclusive representative will be notified sufficiently in advance to provide it a reasonable opportunity to request bargaining on the proposed change or on its impact and implementation within the unit, as appropriate.

(2) Upon receipt of a new or revised regulation dealing with personnel policies or practices or matters affecting working conditions of DoD civilian employees, management at the level of implementation shall promptly provide a copy to any labor organization holding exclusive recognition as representative of employees affected by the regulation. Except where the parties have agreed otherwise, management shall, upon request, enter into discussions with the labor organization with the objective of reaching a mutual understanding as to how the regulation is to be implemented locally (to the extent local management has discretion in its implementation) and its impact on unit employees. The foregoing does not apply in the case of a regulation which conflicts with provisions of an existing agreement (see CPM 711.3-4.b.(4), above).

d. Grievances and Arbitration

(1) Except in the case of matters set forth in 5 U.S.C. 7121(d) and (e), the negotiated grievance procedure is the sole procedure available to the parties and to employees in the unit for resolving grievances which fall within its coverage.

(2) An employee or group of employees in the unit, in filing a grievance under the negotiated procedure, may be represented only by the exclusive union or by a person selected in accordance with the agreement. An employee or group of employees in the unit wishing to present such a grievance without representation may do so; however, any adjustment of such grievance must not be inconsistent with the terms of the agreement, and the exclusive union must be given the opportunity to be present during the grievance proceeding.

(3) Arbitrators' services may be obtained and paid for in accordance with section XXII, Part 2, paragraphs 22-207 and 22-209 of the Defense Acquisition Regulation (CPM 711.E-7), or as otherwise agreed by the parties.

e. Interpretation of Regulations. Questions as to interpretation of published policies or regulations of a primary national subdivision, of the Department of Defense, or of appropriate authorities outside the DoD, may be referred to the head of the primary national subdivision concerned or designee.

(1) When such a question involves interpretation of DoD or higher authority regulations it will be referred by the primary national subdivision to the DASD(CPP) who will either render or, in coordination with the primary national subdivision and the national headquarters of the union involved (if any), obtain an authoritative interpretation.

(2) Questions of interpretation of regulations which arise (a) under a negotiated agreement with reference to material incorporated in that agreement, or (b) in a grievance context, will be processed in accordance with whatever procedure has been agreed upon by the parties.

(3) Where a question of interpretation is involved in a dispute over negotiability, it shall be resolved in accordance with the procedure set forth in CPM 711.4-2.

f. Payroll Withholding of Labor Organization Dues

(1) Arrangements between labor organizations holding exclusive recognition and DoD activities for the voluntary payroll withholding of dues of members in the unit shall conform with applicable requirements of 5 U.S.C. 7115 and the Civil Service Regulations (CPM 711.E-8).

(2) DoD activities and commands shall consult with the head of the cognizant primary national subdivision or designee before responding to a labor organization's petition seeking dues withholding based on 10 percent membership in a proposed unit pursuant to 5 U.S.C. 7115(c).

(3) A supervisor excluded from a formal or exclusive unit on or before December 31, 1970 pursuant to former section 24(d) of Executive Order 11491 may continue his/her allotment for withholding of labor organization dues in accordance with section 550.323 of the Civil Service Regulations (CPM 711.E-8) and subject to the policies and conditions set forth in CPM 711.C.

g. Right of Representation. DoD activities shall inform employees in established bargaining units annually of their right to union representation set forth in 5 U.S.C. 7114(a)(2)(B). The posting of an appropriate notice on employee bulletin boards normally will meet this annual notice requirement. A sample notice is provided in CPM 711.B.

h. Change in Unit or in Status of Exclusive Union

(1) Where functional transfers or changes in organizational structure result in changes in the composition of a unit which give rise to questions as to its continued appropriateness or the validity of its existing designation, or when a question arises as to whether certain positions or employees are or should be included in an existing unit, an appropriate petition may be filed in accordance with the regulations of the Federal Labor Relations Authority (CPM 711.E-6).

(a) Until such questions have been resolved through appropriate procedures, the activity concerned will, to the maximum extent practicable, maintain the personnel policies, practices, and matters affecting working conditions which have been applicable to the employees involved, including dues withholding.

(2) When an existing unit is transferred substantially intact from one DoD activity or command to another, and there is no question as to its continued appropriateness or the representative status of the incumbent labor organization, the gaining employer will adhere so far as practicable to the personnel policies, practices, and matters affecting working conditions which have been applicable to the employees involved, including dues withholding, until such time as the gaining employer has fulfilled its bargaining obligation under the Statute.

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(3) The head of a DoD activity or command shall petition for an election to determine whether employees in an exclusive unit should cease to be represented by a labor organization only on the basis of a good faith doubt that the organization enjoys the support of a majority of the employees in the unit, and shall then do so only after consultation with the head of the primary national subdivision involved, or designee.

(4) Under no circumstances will DoD supervisors or management officials initiate, circulate, or provide assistance in connection with the circulation of a decertification petition for signature by employees, or poll individual employees as to their membership in or desire to continue to be represented by an exclusively recognized labor organization. Petitions for decertification elections may be circulated by employees only during nonwork time.

(5) Exclusive recognition accorded a labor organization shall not be terminated by the head of a DoD activity or command except upon receipt of a certification from the Federal Labor Relations Authority that the organization does not represent the employees in the unit, or in compliance with a requirement issued by the Authority.

3-5. GENERAL PROVISIONS

a. Solicitation of Membership and Support

(1) Activity employees may not be prohibited from soliciting membership or support on behalf of or in opposition to a labor organization on activity premises during the nonwork time of the employees involved (that is, both those engaged in solicitation and those being solicited), provided there is no interference with the work of the installation.

(2) Activity employees may not be prohibited from distributing literature on behalf of or in opposition to a labor organization on activity premises in nonwork areas and during the nonwork time of the employees involved (that is, both those engaged in distribution and those receiving literature), provided there is no interference with the work of the activity.

(a) Literature posted or distributed within a DoD activity must not violate any law, applicable regulations, provisions of a negotiated agreement, or the security of the DoD activity, or contain libelous material.

(b) Labor organizations will be considered responsible for the content of literature distributed by their representatives.

(3) Subject to normal security regulations and reasonable restrictions with regard to the frequency, duration, location(s), and number of persons involved in such activities, labor organization representatives who are not employees of the activity may be permitted, upon request, and at the discretion of the head of the activity, to distribute literature or to solicit membership or support on activity premises in nonwork areas and during the nonwork time of the employees involved.

(a) Permission may be withdrawn with respect to any such activities which interfere with the work of the installation, or with respect to any representative who has engaged in conduct prejudicial to good order or discipline on activity premises.

(b) Where no labor organization holds exclusive recognition as representative of the employees involved and permission is granted to one such organization for nonemployee representatives to engage in on-station organizing or campaigning activities, the same privilege shall be extended to any other requesting labor organization with equivalent status.

(c) Where the employees involved are covered by exclusive recognition, permission will not be granted for on-station organizing or campaigning activities by nonemployee representatives of labor organizations other than the incumbent exclusive union except where (1) a valid question concerning representation has been raised with respect to the employees involved, or (2) the employees involved are inaccessible to reasonable attempts by a labor organization other than the incumbent to communicate with them outside the activity's premises.

b. Use of Facilities. Where no union holds exclusive recognition, activity facilities may be made available for the use of labor organizations where practicable, upon request, on an impartial and equitable basis, for such purposes as the posting of notices or membership meetings outside regular working hours. Where a labor organization holds exclusive recognition, the use of activity facilities by that organization is a proper subject for negotiation under the Federal Service Labor-Management Relations Statute (CPM 711.E-1).

c. Use of Official Time

(1) In the interests of efficient conduct of Government business and the economical use of Government time, and in order to draw a reasonable distinction between official and nonofficial activities, those activities concerned with organizing efforts and the internal management of labor organizations may be conducted only while the employees involved are in a nonduty status.

(a) Such activities include but are not limited to the solicitation of memberships, collection of dues or other assessments, circulation of authorization cards or petitions, solicitation of signatures on dues-withholding authorizations, campaigning for labor organization office, and distribution of literature.

(b) Similarly, when labor organizations schedule membership meetings, internal elections, workshops on negotiating skills or techniques, local, State, or national conventions or similar events wholly or partially within the scheduled work hours of employees, any employees attending or participating in such events shall do so in an annual leave or leave without pay status.

(2) Employees who represent a labor organization shall be on official time when participating in the negotiation of a labor-management agreement within the limitations set forth in 5 U.S.C. 7131.

(3) An employee who is an official or representative of a labor organization holding exclusive recognition may be excused without charge to leave in conjunction with attendance at a training session sponsored by that organization, provided the subject matter of such training is of mutual concern to the DoD and the employee in his/her capacity as an organization representative and the DoD's interest will be served by the employee's attendance.

(a) Administrative excusal for this purpose should cover only such portions of a training session as meet the foregoing criteria and will normally not exceed 8 hours annually for any individual. (See Comptroller General decisions B-156287, July 12, 1966, February 28, 1977, and March 23, 1977.)

(b) Subject to the same criteria and limitations, an employee who is a representative of a labor organization with responsibilities under the Federal Wage System (FWS) also may be excused for the purpose of attending a training session sponsored by the labor organization concerning FWS policies and operations.

(4) Primary national subdivisions shall ensure that activities under their cognizance have established systems for the recording and maintenance of data on the amount of official time spent by employees on representational functions, as defined in section 711.104 of Book II, FPM Supplement 711-1 (CPM 711.E-9), in accordance with instructions issued by the Office of Personnel Management.

d. Furnishing of Information. Lists of names, position titles, grades, salaries, and/or duty stations of activity or unit employees will be furnished to labor organizations upon request. Lists of DoD employees' home addresses or telephone numbers will not be furnished to labor organizations. Other information which is necessary and relevant to the performance of an exclusive union's representational functions (but not including material described in 5 U.S.C. 7114(b)(4)(C)) shall be furnished to the union on request, subject to the guidance set forth in Appendix C to FPM Supplement 711-2 (CPM 711.E-9).

(1) If the cost of providing documents or other information is significant, an appropriate charge should be made in accordance with DoD Instruction 7230.7 (CPM 711.E-10) or DoD Directive 5400.7 (CPM 711.E-11), whichever is applicable.

(2) When a list of employees is furnished to a Federal Labor Relations Authority representative for use in checking a labor organization's showing of interest, a copy of the list shall be furnished, without charge, to the petitioning organization and to any other labor organization qualifying as an intervenor.

e. Standards of Conduct for Labor Organizations. In any case in which a labor organization requests or holds exclusive recognition and a question arises as to whether the organization is in compliance with the Standards of Conduct set forth in 5 U.S.C. 7120, the activity concerned shall promptly furnish all available information concerning the matter to the head of the primary national subdivision, or designee. Where the information available raises a substantial question as to compliance with the Standards of Conduct on the part of a labor organization seeking or holding exclusive recognition or national consultation rights, the head of the primary national subdivision may refer the matter to the appropriate office of the Federal Labor Relations Authority or the Labor-Management Services Administration of the Department of Labor.

f. Threatened or Actual Strike, Work Stoppage, Slowdown or Prohibited Picketing. Action to be taken in the event of a threatened or actual strike, work stoppage, slowdown or disruptive picketing of a DoD activity in a labor-management dispute engaged in by DoD employees is set forth in CPM 711.4-6.c. Primary national subdivisions shall establish, issue, and periodically review work stoppage contingency planning guidance applicable to all commands and activities having employees subject to the Federal Service Labor-Management Relations Statute (CPM 711.E-1).

Subchapter 4. Resolution of Labor-Management Disputes

4-1. UNIT, REPRESENTATION, AND ELECTION ISSUES

a. The regulations of the Federal Labor Relations Authority (CPM 711.E-6) set forth procedures for the handling of various types of disputes and appeals that may arise in connection with the processing of petitions for exclusive recognition. These include challenges to a labor organization's status under the Federal Service Labor-Management Relations Statute (CPM 711.E-1) or to the showing of interest filed with its petition, failure to agree on an appropriate unit, failure to agree on election details, objections to the conduct of an election or to conduct affecting the results of an election, disputes arising during the course of hearings, or similar matters.

b. Denial by the head of a primary national subdivision or by the ASD(MRA&L) of a labor organization's request for national consultation rights, or termination of such rights, may be appealed by the labor organization to the Federal Labor Relations Authority in accordance with the Authority's regulations.

c. The head of any primary national subdivision proposing to file exceptions with the Authority concerning a recommended decision involving a unit, representation or election matter, where such recommended decision appears to have important DoD-wide implications, shall provide a copy of the proposed exceptions to the DASD(CPP) as soon as possible but not later than 5 workdays prior to the deadline for filing.

4-2. DISPUTES CONCERNING NEGOTIABILITY

a. When an issue develops in connection with negotiations between a DoD command or activity and a labor organization over the negotiability of any proposal, the following procedure will be followed:

(1) The activity or command should make every effort to develop, and obtain the labor organization's acceptance of, a feasible, legal alternative to the proposal whose negotiability is questioned.

(2) If efforts to find a mutually acceptable alternative to the proposal prove unsuccessful, and the labor organization requests in writing a statement of position on the negotiability of the proposal in question, the activity or command shall immediately consult, by telephone, with the head of the primary national subdivision or designee for this purpose.

(3) Under 5 U.S.C. 7117 and the regulations of the Federal Labor Relations Authority (CPM 711.E-6), 5 CFR 2424, labor organizations may appeal to the Authority (a) upon receipt of a written statement setting forth the position of the activity or command on the negotiability issue, or (b) if no written statement is received within the period of time specified in the regulations. In order to comply with 5 U.S.C. 7117(c)(2)(B), a labor

organization must serve a copy of any such appeal on the Director, Labor-Management Relations, Department of Defense, OASD(MRA&L), Room 3D264, The Pentagon, Washington, D.C. 20301.

(4) Upon receipt of a copy of an appeal filed with the Authority concerning a negotiability issue, the Director, Labor-Management Relations, will immediately provide a copy to the primary national subdivision concerned, if the latter has not been served a copy, and will work with the primary national subdivision in developing an agency statement of position for submission to the Authority.

b. Where a proposal appears to conflict with a regulation of the primary national subdivision concerned or of the Department of Defense, and there is no apparent conflict with applicable law or regulations of appropriate authority outside DoD, either party may request a regulatory exception to permit negotiation on the proposal. Such requests, as well as questions as to the level of issuance of a regulation, should be referred to the head of the primary national subdivision or his/her designee. The party initiating such a referral should serve a copy on the other party.

(1) Issues referred to the primary national subdivision level by one or both parties will be processed as follows:

(a) When the issue is whether an exception to one or more published policies or regulations of the primary national subdivision should be granted to permit negotiation, the head of the primary national subdivision or his/her designee shall forward a copy of the referral to the DASD(CPP). The proposed decision of the head of the primary national subdivision shall be discussed with the DASD(CPP) prior to issuance.

(b) Where the issue is (1) whether an exception to one or more published DoD policies or regulations should be granted to permit negotiation on the proposal, or (2) whether a particular regulation was issued at the primary national subdivision level, the head of the primary national subdivision shall refer the case as promptly as possible to the DASD(CPP). The case file will be accompanied by the primary national subdivision's analysis of the issue and its recommendation and rationale therefor.

(c) A request for an exception to a published policy or regulation may be denied only on the basis of a determination (1) that the regulation deals with a matter concerning which, pursuant to the Federal Service Labor-Management Relations Statute (CPM 711.E-1), agencies are not obligated to negotiate; (2) that the regulation results from the exercise of an agency management right established by 5 U.S.C. 7106; or (3) that a compelling need for the regulation appears to exist under criteria established by the Federal Labor Relations Authority. Decisions on requests for exceptions to published policies or regulations issued at the DoD or primary national subdivision levels may not be made at subordinate levels.

c. When an issue of negotiability arises in the context of unfair labor practice proceedings before the General Counsel of the Federal Labor

Relations Authority, or in connection with impasse proceedings before the Federal Service Impasses Panel, the DoD command or activity involved shall promptly notify the head of the cognizant primary national subdivision or designee as to the nature of the issue. The primary national subdivision will, in turn, alert the DASD(CPP). Determinations on such issues will be made in conformance with the procedures set forth above, to the maximum practicable extent consistent with the rules of the General Counsel or the Panel, as appropriate.

4-3. NEGOTIATION IMPASSES

a. In the event a negotiation dispute between a DoD activity or command and an exclusively recognized labor organization persists despite diligent efforts to reach agreement on all issues, the assistance of the Federal Mediation and Conciliation Service (FMCS) may be requested in accordance with the procedures set forth in the regulations of the FMCS (CPM 711.E-12). Mediation shall be considered the primary means of resolving negotiation impasses within the Department of Defense.

b. When a negotiation impasse remains unresolved despite the efforts of the FMCS or other mediator agreed upon by the parties, the issues involved may be referred to the Federal Service Impasses Panel by the labor organization or by the DoD activity or command (as appropriate), or both, in accordance with the Panel's regulations (CPM 711.E-6), 5 CFR 2471. A copy of any such referral shall be promptly forwarded by the activity or command to the head of the primary national subdivision or designee.

c. Arbitration may be used by DoD commands or activities and labor organizations in attempting to resolve negotiation impasses after consultation with the head of the primary national subdivision or designee and subject to approval of the proposed procedure by the Panel.

4-4. DISPUTES OVER GRIEVABILITY OR ARBITRABILITY. Under 5 U.S.C. 7121(a)(1), agreements must include procedures for the resolution of disputes as to whether a matter is grievable or arbitrable under the provisions of the negotiated grievance procedure.

4-5. NONACCEPTANCE OF ARBITRATION AWARDS IN GRIEVANCE CASES

a. An award rendered by an arbitrator on any issue referred to arbitration under the terms of a negotiated grievance procedure will be accepted by the cognizant DoD official unless (1) implementation of the award would involve violation of applicable law or regulation, or (2) the award presents other grounds for review similar to those applied by Federal courts in private sector cases.

b. The head of a DoD activity or command who proposes that exceptions be filed to an arbitration award for one of the reasons referred to above shall forward the proposal including full justification, within 10 calendar days of issuance of the award, to the head of the primary national subdivision or designee for this purpose.

c. If he/she agrees that exceptions are warranted, the head of the primary national subdivision shall promptly refer all pertinent information concerning the case, including a copy of the award in question, to the DASD(CPP). The DASD(CPP), upon concurrence, will authorize further processing of the case in accordance with the regulations of the Federal Labor Relations Authority (CPM 711.E-6).

(1) Upon concluding that exceptions are not warranted, the head of the primary national subdivision or the DASD(CPP), as appropriate, shall issue instructions for compliance with the arbitration award.

(2) Where an award involves pay, leave, or other expenditure of Government funds, and a question arises as to whether implementation of the award would involve violation of law, a ruling may be sought from the Comptroller General. Seeking such a ruling directly, however, does not relieve an agency of its obligations under the Statute and is not a defense to an unfair labor practice complaint. Exceptions should therefore be filed with the Authority in accordance with the procedure set forth herein in every case in which an award appears to conflict with applicable law.

d. Each primary national subdivision shall establish procedures to ensure that arbitrators, when rendering awards concerning matters covered by 5 U.S.C. 4303 or 5 U.S.C. 7512, have applied the same standards as a Merit Systems Protection Board (MSPB) examiner would have used if the matter had been appealed to the MSPB. A negative finding in this regard may be grounds for seeking judicial review under 5 U.S.C. 7121(f) and 5 U.S.C. 7703(d). Proposals for judicial review in such cases should be submitted as promptly as possible to the Office of Personnel Management by the head of the cognizant primary national subdivision or his/her designee, with a copy to the DASD(CPP)

e. Upon learning that a labor organization has filed with the Authority exceptions to an arbitration award involving a DoD activity or command, the head of the primary national subdivision involved shall promptly provide the DASD(CPP) with a copy of the award in question and the labor organization's petition for review.

4-6. ALLEGATIONS OF UNFAIR LABOR PRACTICES

a. In order to maximize settlement prospects and avoid costly litigation wherever possible, DoD activities and commands are encouraged to seek agreement with labor organizations holding exclusive recognition that either party, before filing an unfair labor practice charge with the Federal Labor Relations Authority (except in cases involving apparent violations of 5 U.S.C. 7116(b)(7)), will provide the other party with a copy of the proposed charge and meet, on request, to discuss the matter and explore its resolution.

b. Each primary national subdivision will establish procedures for the processing of allegations that 5 U.S.C. 7116 has been violated, subject to the following requirements:

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(1) Issues which are subject to established appeal procedures will be processed under such procedures rather than under the unfair labor practice regulations of the Federal Labor Relations Authority.

(2) Except for matters where the aggrieved employee has the option of using either the negotiated grievance procedure or an appeal procedure pursuant to 5 U.S.C. 7121(e) and (f), unfair labor practice issues which can be raised under a grievance procedure may be processed under that procedure or under the unfair labor practice regulations of the Authority, at the election of the aggrieved party.

(3) All cases involving any strike, work stoppage, slowdown, or the picketing of an activity where such picketing interferes with activity operations, will be governed by the procedures set forth in 4-6.c., below.

(4) Procedures governing cases involving unfair labor practice charges filed against DoD activities or commands under the regulations of the Federal Labor Relations Authority will provide for:

(a) Observance of time limits and other requirements set forth in the regulations of the Authority (CPM 711.E-6), 5 CFR 2423.

(b) Timely investigation of the charge by the activity or command involved, including informal contacts and discussion with representatives of the labor organization, so as to determine all relevant facts and, if possible, produce an acceptable resolution of the matter without resort to formal proceedings.

(c) Prompt notification to the head of the primary national subdivision or designee by the DoD activity or command upon receipt of a formal unfair labor practice complaint issued by a Regional Office of the Federal Labor Relations Authority.

(d) Thorough and professional preparation and presentation of the management case in connection with any hearing held before the Authority.

(e) Transmittal by the activity or command, within 3 days of its receipt, of a copy of the Administrative Law Judge's recommended decision to the head of the primary national subdivision or designee.

(f) Timely submission to the head of the primary national subdivision or designee of any recommendations from the activity or command that (1) exceptions to the Administrative Law Judge's recommended decision should be filed or (2) judicial review of the Authority's final decision should be sought. Any such recommendation should be accompanied by supporting rationale and case citations.

(g) Transmittal to the DASD(CPP) of a copy of each Administrative Law Judge's recommended decision as soon as it is received by the primary national subdivision.

c. Job Actions. The proscriptions in 5 U.S.C. 7116(b)(7) and the provisions of this section concern strikes, work stoppages, slowdowns, and prohibited picketing involving labor organizations representing DoD employees.

(1) Establishing Responsibility. In proceeding against a labor organization under 5 U.S.C. 7116(b)(7) it will be necessary to establish:

(a) That employees or organization representatives are participating or have participated in a prohibited act; and

(b) That the prohibited act was ordered, approved or authorized by a responsible official of the organization; or that when apprised of participation in the prohibited act by organization representatives and/or by employees represented by the organization, the responsible labor organization official did not take prompt steps to disavow the act and order those involved to cease their participation.

(2) Procedure

(a) When information reaches the head of a DoD activity that a representative of a labor organization with members employed at the activity has indicated that such members may or will engage in an act prohibited by 5 U.S.C. 7116(b)(7), or when it is apparent that employees are actually engaging in such an act, an appropriate representative of the activity or primary national subdivision concerned will immediately seek to contact the head of the local labor organization and apprise that individual of the situation. If the head of the labor organization disavows or withdraws any threatening statements and there is no evidence that the organization ordered, approved or authorized a prohibited act, and if prompt steps are taken by the organization to disavow any such act and order its members to cease their participation, no futher action will be taken against the organization.

(b) If (1) there is evidence that the labor organization ordered, approved or authorized the prohibited act (even though it took prompt steps to stop the act), or (2) the organization fails to take prompt steps to disavow the prohibited act and order its members to cease their participation, or (3) the organization denies that a prohibited act has occurred, an unfair labor practice charge should be filed with the cognizant Regional Director of

the Federal Labor Relations Authority in accordance with applicable provisions of the Authority's regulations. Such a charge should be filed as promptly as possible following consultation between the activity and the headquarters of the primary national subdivision concerned.

(c) Upon receipt of information indicating that acts prohibited under 5 U.S.C. 7116(b)(7) have occurred or been threatened, the head of the primary national subdivision or his/her designee will, if the labor organization involved is affiliated with a national or international organization, notify the head of such organization and acquaint him/her with the available facts. The DASD(CPP) will also be alerted. At this time such informal discussions as may be necessary to clarify the facts should be held and, if required, further investigation will be made by the primary national subdivision.

(d) DoD management representatives are expected to cooperate fully with representatives of the Federal Labor Relations Authority in connection with expedited investigations and other proceedings stemming from the filing of a section 7116(b)(7) charge.

d. Individual employees engaging in any strike activity prohibited by 5 U.S.C. 7311 will be subject to disciplinary procedures and to penalties established by applicable law and regulations without regard to other provisions of this Chapter.

4-7. JUDICIAL REVIEW

a. Most types of final decisions issued by the Federal Labor Relations Authority may be appealed to an appropriate United States Court of Appeals pursuant of 5 U.S.C. 7123. In order to ensure consistency of interpretation and full consideration of the policy and program implications of such appeals, any proposal for judicial review of a decision of the Authority shall be forwarded through channels to the Office of the General Counsel, DoD, for review and approval in coordination with the DASD(CPP).

b. Staff attorneys authorized to represent the Department of Defense in connection with court appeals of decisions of the Authority shall furnish copies of case documents on a timely basis to the DASD(CPP).

c. The DASD(CPP) shall be promptly notified when a primary national subdivision learns that a labor organization has initiated court action in a matter arising out of its relationship with a DoD activity.

Subchapter 5. Information and Reports Required

5-1. INFORMATION REQUIRED. In addition to other requirements set forth in this Chapter, primary national subdivisions shall furnish the following to the DASD(CPP):

a. A copy of any letter issued by a primary national subdivision that (1) denies a request for national consultation rights, or (2) provides a labor organization with notice of intent to terminate its national consultation rights.

b. A copy of any written communication submitted to the Office of Personnel Management that requests guidance or advice on a labor-management relations matter.

c. A copy of any petition for exclusive recognition filed by a labor organization, or any request for unit consolidation, that would result in a unit extending beyond a single DoD activity or installation.

5-2. REPORTS. Primary national subdivisions within DoD shall submit the following to the Office of Personnel Management (OPM):

a. An annual updating of data on recognitions and agreements in accordance with section S2-8, FPM Supplement 711-1 (CPM 711.E-9), and annual FPM Bulletins issued by OPM. Data on units of nonappropriated fund activity employees will be identified as such and summary data on such employees will be reported separately.

b. Major changes in regulations dealing with labor-management relations, copies of arbitration awards, negotiated and renegotiated agreements, and information on new or revised units of recognition and significant third-party cases, in accordance with subchapter S2-8 of FPM Supplement 711-1 (CPM 711.E-9).

c. Interagency Report Control Number 1060-OPM-AN has been assigned to these reporting requirements.

APPENDIX A

Guide for Determining Appropriateness of Bargaining Units

A-1. POLICY. The determination of bargaining unit appropriateness under the Federal Service Labor-Management Relations Statute (CPM 711.E-1) is a function of the Federal Labor Relations Authority. The Authority is governed by the following basic policies:

a. A unit may be established on any agency, activity or installation, craft, function or other basis which will (1) ensure a clear and identifiable community of interest among the employees concerned, (2) promote effective labor-management dealings, and (3) promote efficiency of operations. These three criteria must be given equal weight.

b. No unit shall be established solely on the basis of the extent to which employees in the proposed unit have organized.

c. No unit shall be established that includes both professional employees and nonprofessional employees unless a majority of the professional employees vote for inclusion in the unit.

d. No unit may include:

(1) Any management official or supervisor (except that this prohibition does not apply to units of supervisors in maritime occupations represented by labor organizations which traditionally represent such supervisors in private industry and which held exclusive recognition for such units in any Federal agency on October 29, 1969, or to supervisors in units to which section 1271(a) of the Panama Canal Act of 1979 (CPM 711.E-5) applies).

(2) Any confidential employee, i.e., an employee who assists and acts in a confidential capacity to an official who formulates or effectuates management policies in the field of labor relations, and who therefore has regular access to confidential labor relations material;

(3) Any employee engaged in Federal personnel work in other than a purely clerical capacity;

(4) Any employee engaged in intelligence, counterintelligence, investigative, or security work which directly affects national security; or

(5) Any employee primarily engaged in investigation or audit functions of the type described in 5 U.S.C. 7112(b)(7).

e. No unit may include any employee of a DoD subdivision which has been excluded from coverage of the Federal Labor-Management Relations Program by Executive Order 12171 (CPM 711.E-3).

A-2. UNIT CRITERIA. The factors and considerations listed below will be applied by primary national subdivisions, commands, and activities in developing management's position with respect to the appropriateness of units proposed in petitions for exclusive recognition. Where management concludes that a proposed unit would not meet one or more of the three basic criteria (see A-1.a., above) and therefore would not be appropriate, and the petitioning union cannot be persuaded to change its position, management should make a full presentation before the Federal Labor Relations Authority of the basis for its belief that the unit is not appropriate. The consolidation of two or more existing appropriate units will not necessarily result in an appropriate unit; therefore, management should consider each proposed unit consolidation in the light of the criteria and factors set forth herein.

a. Community of Interest

(1) A determination as to the existence of a clear and identifiable community of interest, sufficient to warrant recognition of the employees concerned as constituting an appropriate unit, requires the exercise of judgment and must be made in light of the specific facts and circumstances. An appropriate unit is one in which the particular grouping of employees therein is such that it makes sense for them to deal collectively with management through a single voice.

(2) In evaluating proposed units from the standpoint of community of interest, such factors as the following, among others, should be considered:

- Similarity or relationship of skills
- Distinctiveness of functions performed
- Extent of integration of work processes
- Commonality of working conditions
- Place or places of work
- Extent of employee interchange
- Organizational structure
- Governing personnel and administrative regulations
- Locus of significant authority for personnel and labor relations program decisions
- Common supervision
- Pay systems
- Tenure of employees
- Labor relations history

Many of these factors are interrelated. Following are comments concerning some of them:

(a) Organizational Structure. In evaluating the effect of organizational structure on the appropriateness of a proposed unit, consideration should be given to the common employment interest of the employees in an organizational entity such as a primary national subdivision, command, activity or subdivision thereof, as well as the commonality of supervision exercised and other factors.

(b) Similarity of Skills or Occupations. Units based on a trade, craft, or other distinct occupation normally will consist of a homogeneous group of skilled employees with basically similar training and experience working together with their trainees and helpers. Among factors to be considered in determining the appropriateness of such a unit are the existence of separate supervision and whether all such employees within the organization would be included.

(c) Distinctiveness of Function. Employees with dissimilar skills may have a community of interest as parts of a larger group working together in the performance of a distinct function, which may form the basis for an appropriate unit.

(d) Working Conditions. Consideration should be given to whether there are special work problems or conditions to which the employees in question are subject, as well as their physical location and work sites and whether facilities (tool cribs, locker rooms, and cafeterias) are used in common.

(e) Integrated Work Process. Although there may be functionally distinct organizational elements at an activity, the existence of an integrated work process, in which there is a continuous flow of work among organizational elements, may make a single unit appropriate rather than a number of separate smaller units.

(f) Personnel Regulations and Programs. Whether employees in a proposed unit are covered by the same merit promotion program, are in the same or different areas for RIF bumping purposes, and are covered by the same medical, recreational, and other employment-related programs may have a bearing on community of interest. Whether all employees so covered are included should also be considered.

(g) Labor Relations History. Where a particular pattern of collective dealings has become well established over the years, with effective representation of the interests of various groups of employees involved, effective processing of grievances, and general acceptance on the part of employees and management, this should be given weight in considering unit proposals which would represent a departure from the established pattern. However, where there are two or more units at a DoD activity, the fact that relationships have been satisfactory should not stand in the way of possible consolidation to reduce or eliminate unit fragmentation.

(3) A conclusion that employees in the proposed unit do not share a community of interest normally will be sufficient to warrant opposing the unit. On the other hand, the fact that a clear and identifiable community of interest does appear to exist among the employees in a proposed unit is not sufficient basis, in itself, for approval of the unit. All three of the criteria established by the Statute and set forth in this Guide must be considered and any proposed unit should be viewed in relation to alternative possibilities that might better meet the criteria.

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b. Effective Dealings

(1) In order to determine that a unit is appropriate, it must be found that the unit is such as to promote or contribute to effective dealings between management and labor organizations representing employees under the jurisdiction of the level of management involved. Generally speaking, a proposed unit that would contribute to fragmentation--that is, a pattern characterized by several relatively small units at an activity--or which would have the effect of separating employees who share common functions, working conditions, or supervision, will not promote effective labor-management dealings.

(2) Factors to be considered include:

(a) The size and composition of the unit under consideration in relation to the organization's total work force and the size, composition, and number of exclusive units already in existence within the organization and any others currently being sought.

(b) The traditional jurisdiction or representation pattern of the labor organization involved in relation to the types of unit proposed, and the nature and history of relationships with that organization and other labor organizations holding or seeking recognition.

(c) The organization level(s) encompassed by the unit under consideration, the level at which negotiation will take place, and the potential at that level for meaningful negotiation with respect to personnel policy matters and working conditions of the employees involved.

(d) Personnel management resources of the organization and their availability for day-to-day dealings and negotiation with the labor organization concerned as well as those representing other actual or potential

(3) A number of the factors listed under "community of interes may also be pertinent here, such as organizational structure, commonality supervision, integration of work processes, and coverage of personnel r and practices, among others.

c. Efficiency of Operations

(1) The unit under consideration, to be found appropriate, must be reasonably expected to contribute to efficiency of operations. The question to be asked here is whether negotiation and subsequent dealings on matters of personnel policy and working conditions with the particular group of employees encompassed in the proposed unit, separately from others, will contribute to efficiency.

(2) Pertinent factors include:

(a) Nature, size and location of the unit in relation to the rest of the organization.

(b) The functional relationship of unit personnel to others in the organization.

(c) Physical location of unit employees in relation to others --that is, the degree of separation or intermixture.

(d) The customary flow of work assignments to and completed work from the personnel of the unit in question in relation to other parts of the organization.

(e) The anticipated effect of the proposed unit on personnel managment in terms of the resources available and required, morale factors, etc.

(f) Other costs which would be incurred in negotiating and administering agreements for smaller units as opposed to a broader single unit--whipsaw possibilities, increased training costs, etc.

A-3. APPLICATION OF CRITERIA. The factors and criteria discussed above must be applied to the particular situation and conditions involved in each petition for exclusive recognition, and will not necessarily produce uniform results throughout DoD. However, the following generalizations are valid in most cases:

a. A proposed unit which would consist of all eligible employees of a single DoD activity or installation is appropriate.

b. A proposed unit which would include both appropriated fund and nonappropriated fund employees is not appropriate.

c. A proposed unit which would cross primary national subdivision lines--that is, include employees of more than one primary national subdivision of the Department of Defense--is not appropriate.

APPENDIX B

Sample Notice to Employees - Right of Representation

NOTICE TO EMPLOYEES
IN EXCLUSIVE BARGAINING UNITS

_____
(Name of Activity)

Right of Representation

This is to inform you that pursuant to section 7114(a)(2) of Title 5, U.S. Code, the exclusive union must be given the opportunity to be represented at any examination of an employee in the bargaining unit by a management representative in connection with an investigation if:

(1) The employee reasonably believes that the examination may result in disciplinary action against the employee; and

(2) The employee requests representation.

_____
(Activity Official)

APPENDIX C

Payroll Withholding of Union Dues for Supervisors Excluded from Units of Recognition Pursuant to Former Section 24(d) of E.O. 11491

C-1. EMPLOYEES COVERED. The instructions herein apply only to supervisors who where excluded from formal or exclusive units on or before December 31, 1970, pursuant to former section 24(d) of Executive Order 11491, and allotments for the withholding of labor organization dues for such employees covered by section 550.323 of the Civil Service Regulations (CPM 711.E-8).

C-2. CONTINUATION OF ALLOTMENT. Allotments for the withholding of dues to labor organizations which were in effect on December 31, 1970, will continue in effect until revoked by the employee or terminated under the conditions described herein.

C-3. NEW ALLOTMENT. No new allotment for the payment of dues to a labor organization may be made by an employee covered by these instructions, except under the condition described in C-5.b., below.

C-4. REVOCATION OF ALLOTMENT. A covered employee may revoke his allotment in writing at any time. A written revocation will be effective as of the first pay period beginning after the date of its receipt in the appropriate payroll office. Once revoked, an allotment may not be reinstated.

C-5. TERMINATION OF ALLOTMENT

a. An allotment for the payment of dues to a labor organization under these instructions will be terminated when the employee:

(1) Dies, retires, is separated from the Federal Service, transfers between agencies, or is moved within the Department of Defense by any type of personnel action to an organizational segment having a payroll office other than the one responsible for withholding dues from the employee's pay as of December 31, 1970;

(2) Becomes a member of an exclusive unit represented by a different labor organization; or

(3) Is suspended or expelled from the labor organization, as determined by the labor organization.

b. Once terminated, an allotment may not be reinstated except in the case of an employee who has completed a period of temporary suspension from membership in the labor organization.

C-6. AMOUNT OF DEDUCTION. The amount to be withheld each pay period will be the amount being withheld as of December 31, 1970, unless notice of a change in the amount of dues is given to the payroll office by the labor organization in accordance with the instructions herein.

C-7. WHEN DEDUCTIONS ARE MADE. A deduction will be made each pay period except that no deduction for labor organization dues will be made for any pay period in which the employee's net salary after other legal and required deductions is insufficient to cover the full amount of the deduction for dues.

C-8. SERVICE FEE. No service fee will be charged in connection with dues withholding in the case of supervisors covered by these instructions.

C-9. TRANSMISSION TO LABOR ORGANIZATION. Dues withheld will be transmitted to the labor organization each pay period, and will be transmitted to the office or official designated to receive such payments as of December 31, 1970, unless the payroll office is notified of a change by the labor organization in accordance with the instructions herein.

C-10. RESPONSIBILITIES OF LABOR ORGANIZATION. The labor organization is responsible for promptly notifying the payroll office in writing of:

a. Any change in the name and/or address to whom dues withheld from employees' pay are to be transmitted:

b. Any change made by the labor organization in the amount of dues applicable to an employee whose dues are being withheld under these instructions;

c. The suspension or expulsion from membership of an employee whose dues are being withheld.

C-11. RESPONSIBILITIES OF PAYROLL OFFICE. The payroll office is responsible for notifying the labor organization upon:

a. Receipt of a revocation of a dues allotment from an employee covered by these instructions;

b. Termination of a dues allotment as the result of an event described in C-5.a.(1) and (2), above.

APPENDIX D

Definitions

D-1. The terms "Authority," "labor organization," "Panel," "supervisor," "management official," and "grievance," as used in this Chapter, are defined in 5 U.S.C. 7103(a).

D-2. Employee. See the definition in 5 U.S.C. 7103(a)(2). Within the Department of Defense this definition includes civilian employees paid from nonappropriated fund instrumentalities (NAFIs) (including off-duty military personnel with respect to employment with a DoD NAFI when such employment is civilian in nature and separate from their military assignment). Military personnel are not "employees" for purposes of this Directive with respect to any matter related to their military status or assignment. Contractor personnel also are not covered by the definition. Pursuant to section 1271(a) of the Panama Canal Act of 1979 (CPM 711.E-5), the definition includes non-U.S. citizen employees of the Department of Defense in the Panama Canal area.

D-3. Primary National Subdivision. Within the Department of Defense the following are primary national subdivisions as defined in the regulations of the Federal Labor Relations Authority (CPM 711.E-6), 5 CFR 2421:

a. The Office of the Secretary of Defense/Organization of the Joint Chiefs of Staff

b. The Military Departments

c. The Defense Agencies (except those excluded from coverage under CPM 711.1-2.b.(1) and (2))

d. The National Guard Bureau

e. The Army and Air Force Exchange Service

D-4. Unit. A grouping of employees found to be appropriate under 5 U.S.C. 7112 for the purpose of collective representation by a labor organization in dealing with management.

APPENDIX E

References

E-1. The Federal Service Labor-Management Relations Statute, 5 U.S.C. Chapter 71

E-2. DoD Directive 1426.1, "Labor-Management Relations in the Department of Defense", June 29, 1981 (see Appendix F)

E-3. Executive Order 12171, "Exclusions from the Federal Labor-Management Relations Program," November 19, 1979

E-4. DoD Instruction 1400.10, "Employment of Foreign Nationals in Foreign Areas," December 5, 1980

E-5. The Panama Canal Act of 1979, Public Law 96-70, September 27, 1979

E-6. Regulations of the Federal Labor Relations Authority, General Counsel of the Federal Labor Relations Authority, and Federal Service Impasses Panel, 5 CFR Chapter XIV

E-7. Defense Acquisition Regulation

E-8. Federal Personnel Manual Supplement 990-1, Book III, Sections 550.301-313

E-9. Federal Personnel Manual Supplement 711-1, "Labor-Management Relations"

E-10. DoD Instruction 7230.7, "User Charges," June 12, 1979

E-11. DoD Directive 5400.7, "DoD Freedom of Information Act Program," March 24, 1980

E-12. Regulations of the Federal Mediation and Conciliation Service, 29 CFR Part 1425

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June 29, 1981
NUMBER 1426.1

ASD(MRA&L)

Department of Defense Directive

SUBJECT: Labor-Management Relations in the Department of Defense

References: (a) DoD Directive 1426.1, "Labor-Management Relations in the Department of Defense," October 9, 1974 (hereby canceled)
(b) Title 5, United States Code, Chapter 71, "The Federal Service Labor-Management Relations Statute"

A. REISSUANCE AND PURPOSE

This Directive reissues reference (a) to reflect current authority and responsibility for the establishment of labor-management relations programs and policies covering employees of the Department of Defense and for the exercise of certain functions in implementation of reference (b).

B. APPLICABILITY

The provisions of this Directive apply to the Office of the Secretary of Defense, the Military Departments, the Organization of the Joint Chiefs of Staff, and the Defense Agencies, with the exception of the National Security Agency/Central Security Service, the Defense Intelligence Agency, and the Defense Investigative Service.

C. POLICY

It is the policy of the Department of Defense that DoD managers at all levels shall carry out their responsibilities in labor-management relations with full consideration of the rights of DoD employees and labor organizations representing them as well as of the need for timely mission accomplishment and increased productivity and efficiency of operations. Effective intra-DoD coordination with respect to labor-management relations issues and developments shall be given priority attention.

D. RESPONSIBILITY

1. The Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics) (ASD(MRA&L)) shall:

a. Establish basic principles governing relationships between DoD management and labor organizations representing DoD employees, consistent with the provisions of reference (b).

b. Accord exclusive recognition at the DoD level to qualifying labor organizations under 5 U.S.C. 7111(a) and 7120(a) (reference (b)).

c. Grant national consultation rights at the DoD level to qualifying labor organizations, or terminate such rights, under 5 U.S.C. 7113(a)(1) (reference (b)).

d. With right of redelegation:

(1) Establish labor-management relations programs, policies, and procedures, issue guidance to DoD managers on labor relations matters, and coordinate labor relations programs and activities within the Department of Defense;

(2) Develop or review and clear submissions to the Federal Labor Relations Authority that set forth the DoD position on issues before the Authority, subject to coordination with the General Counsel, Department of Defense, on matters involving legal issues;

(3) Represent the Secretary of Defense in negotiation of agreements with labor organizations accorded exclusive recognition at the DoD level, pursuant to 5 U.S.C. 7114(a) (reference (b)); and

(4) Approve or disapprove negotiated agreements covering units of DoD employees, pursuant to 5 U.S.C. 7114 (c) (reference (b)); and

(5) Represent the Department of Defense in dealings with the Federal Labor Relations Authority, the Office of Personnel Management, and other agencies on labor-management relations matters.

2. The General Counsel, Department of Defense, shall:

a. Develop or review and clear proposals for judicial review of decisions of the Federal Labor Relations Authority under 5 U.S.C. 7123(a) (reference (b)) in cases arising within the Department of Defense, subject to coordination with respect to policy and program implications with the ASD(MRA&L).

b. Communicate with the Department of Justice for the purpose of seeking judicial review of decisions of the Authority and provide or authorize the provision by DoD Components of such legal support as the Department of Justice may require in connection with such cases.

E. EFFECTIVE DATE

This Directive is effective immediately.

Frank C. Carlucci
Deputy Secretary of Defense

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